Filed 12/31/08 Brown v. LAC-USC Med. Center CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOYCE BROWN et al., Plaintiffs and Appellants, v. LAC-USC MEDICAL CENTER, Defendant and Respondent.	B204206 (Los Angeles County Super. Ct. No. BC361587)

APPEAL from a judgment of the Superior Court for the County of Los Angeles. Irving S. Feffer, Judge. Affirmed.

Goodheart & Goodheart and Michael R. Goodheart for Plaintiffs and Appellants.

Pollak, Vida & Fisher and Daniel P. Barer; Peterson & Bradford and Thomas R. Bradford, for Defendant and Respondent..

SUMMARY

The trial court properly granted summary judgment to a county hospital in a wrongful death action where the plaintiffs failed to comply with the claims presentation requirements of the Government Claims Act.

FACTUAL AND PROCEDURAL BACKGROUND

Detoria Brown, a young woman who suffered from sickle cell anemia and a number of other ailments, died at Los Angeles County + USC Medical Center (LAC+USC). Brown was a frequent patient at LAC+USC, and had been admitted on December 1, 2005 for a therapeutic abortion. On December 3, it was determined that Brown needed an exchange transfusion. The transfusion never occurred, and Brown died on December 5, 2005.

In January 2006, Brown's mother, Joyce Brown, wrote a letter of complaint to the California Department of Health Services, requesting an "investigation into medical misconduct" with respect to her daughter's death. Mrs. Brown requested that "you assign your most competent investigator(s) to conduct a formal and thorough investigation concerning probable medical misconduct by County USC Hospital, physicians, nurses and staff which have resulted in the death of my daughter, Detoria Nicole Brown . . . ." Mrs. Brown stated that on December 3, 2005, her daughter's hematologist informed her "that an 'emergency blood transfusion' had to be performed to replace [Detoria's] oxygen or her 'organs would shut down.'" Mrs. Brown's January 9, 2006 letter of complaint further described her "concerns of misconduct," including the following:

> "The 'emergency transfusion' supposedly ordered by the hematologist to administer **lifesaving** oxygen to Detoria **immediately** after the central line IV port was in place was **NEVER** done. The equipment to [do] the transfusion was available, but I was told that they did not have the nurse or technician to run the machine. [¶] Over eight hours had elapsed between the time the transfusion was to take place and the time of Detoria's death. The transfusion was to take only 90 minutes." (Emphasis in original.)

On September 6, 2006, the Department of Health Services wrote to Mrs. Brown, advising her it had completed its investigation and substantiated her complaint. A copy of the "statement of deficiencies" the Department issued to LAC+USC dated August 1, 2006, and LAC+USC's "Plan of Correction" was enclosed for Brown's review.

On November 7, 2006, Joyce and Clyde Brown (Detoria's father) filed a wrongful death complaint. The County answered, including among its affirmative defenses the assertion that the Browns' suit was barred by their failure to comply with the Government Claims Act (Gov. Code, § 900 et seq.), which requires timely presentation of a claim to the responsible public entity before a lawsuit may be filed.[1]

On May 7, 2007, the Browns filed an application with the County for leave to present a late claim.

On July 23, 2007, the County filed a motion for summary judgment on the ground the Browns' lawsuit was barred by their failure to comply with the provisions of the Government Claims Act. The trial court agreed, and judgment was entered in favor of the County. The Browns filed a timely appeal.

DISCUSSION

The principal question presented in this case is whether the Browns' wrongful death cause of action accrued on or around January 2006, when Mrs. Brown wrote her letter of complaint seeking an investigation into the County's "probable medical misconduct," or in September 2006, when she was advised by the Department of Health Services that her complaint had been substantiated. We conclude the action accrued no later than the date Mrs. Brown wrote her letter of complaint, in January 2006. And, because the Browns failed to apply to the County for leave to present a late claim within one year of the accrual of their cause of action, their lawsuit is barred by the Government Claims Act.

We briefly review the relevant legal principles.

---

[1] All further statutory references are to the Government Code, unless otherwise specified.

The Government Claims Act requires that claims for damages against local public entities be presented to the responsible public entity before a lawsuit is filed; failure to present a timely claim bars a lawsuit against the entity. (§§ 905, 945.4; *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738.) In the case of a claim for wrongful death, the claim must be presented "not later than six months after the accrual of the cause of action." (§ 911.2.) If an injured party fails to file a timely claim, he or she may apply to the public entity for leave to present a late claim (and if leave is denied, may petition the court for relief from the claim presentation requirements), but the application must be made "within a reasonable time not to exceed one year after the accrual of the cause of action . . . ." (§ 911.4, subd. (b); § 946.6, subd. (c); *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1779 [court is without jurisdiction to relieve a litigant from the claims presentation requirement if the underlying application to file a late claim is filed more than one year after accrual of the cause of action].)

In this case, the Browns filed no claim with the County until May 7, 2007, when they filed an application for leave to file a late claim. Consequently, if their cause of action accrued at any time earlier than May 2006, their lawsuit is barred. Unfortunately for the Browns, under well-established principles governing the accrual of a cause of action, their lawsuit accrued no later than January 2006, when Mrs. Brown first suspected negligence on the County's part.[2]

The general rule is that a cause of action accrues when it is "complete with all of its elements . . . ." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).) Those elements are "generically referred to by sets of terms such as 'wrongdoing' or 'wrongful

---

[2] In its respondent's brief, the County argues that even if we use the Browns' September 2006 date for the accrual of their cause of action, their claim is barred. The County says that the Browns' May 7, 2007 application to file a late claim was denied by the County, and the Browns failed to petition the court for relief within six months after the County's denial, as required by section 946.6, subdivision (b), thereby effectively forfeiting their claim. The facts asserted by the County, however, are not in the record before this court, and were not the basis for the trial court's grant of summary judgment; consequently, we will not consider the County's argument on this point.

conduct,' 'cause' or 'causation,' and 'harm' or 'injury' . . . ." (*Ibid.*, quoting *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1107, 1109, 1110, 1112, 1113, & 1114 (*Jolly*).) An exception to the general rule is the discovery rule, which "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Norgart, supra*, 21 Cal.4th at p. 397.) However, "a person need not *know* of the actual negligent cause of an injury; mere *suspicion* of negligence suffices to trigger the limitation period." (*Knowles v. Superior Court* (2004) 118 Cal.App.4th 1290, 1295; see *Norgart, supra*, 21 Cal.4th at pp. 397-398, quoting *Jolly, supra,* 44 Cal.3d at p. 1110 ["the plaintiff discovers the cause of action when he at least suspects a factual basis . . . for its elements, even if he lacks knowledge thereof – when, simply put, he at least 'suspects . . . that someone has done something wrong' to him"].) The plaintiff "need not know the 'specific "facts" necessary to establish' the cause of action; rather, he may seek to learn such facts through the 'process contemplated by pretrial discovery' . . . ." [3] (*Norgart, supra*, 21 Cal.4th at p. 398, quoting *Jolly, supra*, 44 Cal.3d at p. 1111.)

Under these well-established rules, we cannot disagree with the trial court's grant of summary judgment to the County. Mrs. Brown knew that a transfusion had been ordered for Detoria on December 3, 2005; was informed by her daughter's hematologist that an emergency blood transfusion had to be performed or Detoria's "organs would shut down"; was told that the transfusion equipment was available but personnel to run the equipment were not; and knew that no transfusion was done. All this is clearly reflected in her letter of complaint dated January 9, 2006, which in turn clearly reflects a "suspicion of negligence" more than sufficient to trigger the accrual of a cause of action for wrongful death. (*Knowles v. Superior Court, supra,* 118 Cal.App.4th at p. 1295 ["a person need not *know* of the actual negligent cause of an injury; mere *suspicion* of

---

[3] *Norgart* continues: "[W]ithin the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place – he 'cannot wait for' them 'to find' him and 'sit on' his 'rights'; he 'must go find' them himself if he can and 'file suit' if he does . . . ." (*Norgart, supra,* 21 Cal.4th at p. 398, quoting *Jolly, supra*, 44 Cal.3d at p. 1111.)

negligence suffices to trigger the limitation period"].) Consequently, because the Browns failed to present any claim to the County until May 7, 2007 – well in excess of "one year after the accrual of the cause of action" in January 2006 (§ 911.4, subd. (b)) – their claim is barred.

DISPOSITION

The judgment is affirmed. The County of Los Angeles is to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COOPER, P. J.

We concur:

RUBIN, J.

BIGELOW, J.